

# Chicago-Kent Law Review

---

Volume 30 | Issue 1

Article 8

---

December 1951

## Book Reviews

Chicago-Kent Law Review

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>



Part of the [Law Commons](#)

---

### Recommended Citation

Chicago-Kent Law Review, *Book Reviews*, 30 Chi.-Kent L. Rev. 104 (1951).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol30/iss1/8>

This Book Review is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact [jwenger@kentlaw.iit.edu](mailto:jwenger@kentlaw.iit.edu), [ebarney@kentlaw.iit.edu](mailto:ebarney@kentlaw.iit.edu).

## BOOK REVIEWS.

CHARLES EVANS HUGHES. Merlo J. Pusey. New York: The Macmillan Company, 1951. Vol. I, pp. xvi, 1-410; Vol. II, pp. vii, 411-829.

The rising generation has developed the art of personification to the point where a single descriptive physical term is often enough to identify a prominent personage. A simple reference to "The Voice," "The Body," "The Groaner," or the like is, to the modern American youth, the equivalent of speaking in volumes. If such a term were to be devised for the subject of this two-volume biography some would be inclined, in facetious vein, to think of "Mr. Whiskers," but the more apt term would be "Mr. Justice Himself." So much oversimplification, however, would fall short of its mark for the late Chief Justice Hughes served his state and his country not only as judge but as investigator, governor, presidential candidate, Secretary of State, treaty-maker, speaker on public affairs and adviser too, while serving his profession as law lecturer, practitioner, legal aid worker, bar association president and exemplar of its ideals. Even then the list would be incomplete, but it is true that Charles Evans Hughes stands first in the American mind for his dignified service as Chief Justice of the United States Supreme Court. In that regard, his name is frequently linked with that of John Marshall; the one for having given the commerce clause its initial standing, the other for having moulded it to meet the pressures generated by a modern industrial economy.

There should be little need, when reviewing the biography of a man who has passed but recently from the American scene, to detail the facts of his life for most of them are still within the memory of the living. Those items which have been forgotten can be found set forth in these two volumes. They, if not official in character, can at least be said to have been authorized by the subject and were written, in the large, around his own notes as amplified by personal discussion with the author. The latter, associate editor of the Washington Post and already known for his sterling work on the subject of the Supreme Court crisis, has not written just a journalistic gloss on those notes but has added trenchant evaluation to the factual data therein set forth. The end product represents as sympathetic yet faithful a biography as has been written these many years and one full worthy to add to the growing list of life accounts of other great American judges.

To the lawyer, of course, the best chapters will be those dealing with the work of Hughes as judge. The intimate, behind the curtain account of the Supreme Court and its decisions during the period from 1910 to 1916, and again from 1930 to 1941, replete with interesting personal

touches and some material still so secret in character that the sources thereof must remain hidden by cryptic references to Confidential Source No. 1, No. 2, etc., is especially enlightening. The account of the Court-Packing fight and of Hughes' dignified, cool judicial handling of the problem should be read, if for no other reason, to learn how an ethical individual, with his emotions under control, can bring to nought the wily schemes of ranting and unscrupulous politicians. Stirred by the warmth of these pages, one will be led quite easily to speculation as to what the world would have been like had Hughes become president rather than judge. Whether he would have served his country well in that capacity will never be known. Perhaps the American people should rest content in the thought that it had the benefit of his services in many other ways and that there are men like Mr. Pusey to record those services so capably.

ANNUAL SURVEY OF AMERICAN LAW, 1950 Edition. New York University School of Law. New York: Prentice-Hall, Inc., 1951. Pp. x, 915.

By means of this, the ninth or current, edition of the annual surveys of American law prepared by the faculty of New York University School of Law, the legal profession is again furnished with a detailed picture of law in the course of its daily growth. In format and arrangement, the study parallels prior volumes. Content and detail, however, necessarily vary with each succeeding volume. For that matter, the scope of, and treatment given to, individual topics changes from year to year as new writers take over and newer litigated issues press for attention, displacing emphasis from areas noted in former years. The change from private to commercial publication in no way detracts from the value of the current edition for there appears to have been close attention given to standards of performance observed in earlier issues. The current volume, then, represents an equally monumental and highly successful effort.

At the national level, no other published survey of law provides the synopsis to be found herein. One is apt to gain the impression, at the state level, however, that New York law tends to predominate over the scene. It may well be that, because of the size of its population and the diversity of interests represented, New York experiences most legal problems ahead of other jurisdictions. It would be unfortunate if, such not being always the case, this annual report to the legal profession at large should cease to live up to its name as a survey of American, as distinguished from local, law. One is also forced to wonder a little at the validity of the method which seems to be followed in documenting the cases noted to the discussions thereof which appear in the various law

reviews and other legal periodicals. An occasional reference of that sort could well lead the reader into a mistaken belief that nothing else has been written on the subject. A glance at an index to legal periodicals would prove otherwise for the bulk of significant recent cases receive treatment, of a kind, in at least local, if not nationally known, publications. A last-minute check against the contents of such journals, prior to the job of typesetting, might supply valuable information designed to make this survey into a usefully comprehensive as well as a detailed product.

LEVIATHAN AND NATURAL LAW. F. Lyman Windolph. Princeton, New Jersey: Princeton University Press, 1951. Pp. ix, 147.

Forty years of reading, thinking, and inquiry, according to the author's foreword, have gone into the making of this slender volume; one so brief that it may be scanned in less than an hour's time. The argument it discusses, however, has ranged throughout the whole of mankind's conscious effort to align law, that which evolves and operates in a political society, with the postulate of a Divine, or natural, body of morality against which the former may be measured or by which it may be judged. No mere forty years of thought will serve to settle that argument for Aquinas and Hobbes, and their respective schools, will not concede that Leviathan could lie down with the Lamb, although some small measure of agreement may be found between them. The legal positivist, insistent upon a rigid separation between politics and morality, will never be willing to experience the small act of faith that comes so readily from the champion of natural law and is so necessary for the support of his philosophy. The latter, seeking always for the ideal, gives little heed to that which does, in fact, exist.

Reconciliation being impossible, it might at first be assumed that the author has indeed wasted his time. Such, however, is far from the case for he has sought resolution, inverting the usual process, by founding a theory of natural law on the basis of positivism. He draws the conclusion that natural justice may flow, from the blessing of liberty, within a democratic state, provided it is one in which the essential difference between sovereignty and government is not overlooked. From the writings of others, as far back as Aristotle up to as modern a man as Holmes, he has extracted much of apt quotation to support his thesis. For sincerity of purpose as well as for clarity and excellence of language, the author is to be commended. For inspired writing, he deserves praise. But beware, the pull of these brief pages, once scanned, will not down but will demand reading and re-reading again and again. There is much here that is Caesar's, but more that belongs to God.